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N^o 118.

A Vindication of the LAWS OF ENGLAND from a Libel in FOG's Journal of November the First.



Could have wished myself sooner at Leisure to consider FOG's Journal of the First of this Instant November; but I cannot, on any Account, excuse myself from some Observation on a Writer who, with the utmost Subtlety, and the most laboured Disguise, insinuates the *Laws of this Realm*

to be the most cruel, and the Government exercised according to Law, the most tyrannical of any in Europe. I had always been taught, even by the Enemies of the Administration, that our Constitution was the very best in the World; and the Wickedness imputed to every Minister, hath been their supposed Deviations from the Law. But the LAW OF ENGLAND itself is, at present, arraigned, and every Misfortune which can befall the People, is ascribed to the Frame of their Constitution. The Remedy of this Grievance naturally follows, namely, a Rebellion against the Constitution; and since a Government exercised according to Law is so dreadful a Tyranny, the Reverse of this must be the desirable Blessing, and the People henceforth are to fight for a Government which is to abolish the Law.

How necessary this may be to the Service of a Faction, which lost its Dominion by a Trial of Skill, whether the Will of the Prince, or the Law of the Land, should be the supreme Authority: How useful this may prove in favour of the Grim Idol, who claims a divine Right to exercise Government, not according to Law, but his own good Will and Pleasure; or whatever End such Doctrine is designed to serve, yet sure I am 'tis no Part of the System of Government now established amongst us; 'tis no Court Doctrine; 'tis no ministerial Trick; and therefore I desire that the right Owners may have the Popularity of asserting Principles, which, dare I say, the Friends of his Majesty KING GEORGE, and of the SUCCESSION in his Protestant Royal Family, claim and detest with as much Zeal as they abjure the Pretender.

The Recommendation of these extraordinary Principles is introduced with some Remarks on the Frequency of Executions in England, and on the pretended Lenity of our Laws.

This Frequency of Executions is aggravated by an Observation, That the Law of England punishes the Crime of stealing Sixpence in the same Degree with the most barbarous Murder; which I affirm to be absolutely false: Nor is it capital to steal forty Sixpences, unless the Manner of the Robbery be constructive of a greater Crime. As for Instance; an Assault upon the Highway, thereby putting any one in Fear of his Life; as also breaking an House at Night, may vary the Case of stealing Sixpence, and make it only a Part of the Crime of an Highwayman or House-breaker: It is therefore, in the first Place, a Misrepresentation of the Laws of England, to charge the Frequency of Executions on the capital Punishment of petty Offences and of light Transgressions.

The next Allegation against our Laws, is, that Nations abroad, laying hold on the Distinction between Crimes which are *real*, and others which are *constructive* only, or between *Malum prohibitum* and *Malum in se*; such Nations, says the Writer, are more cautious in condemning Men upon penal Laws, or for Crimes merely statutory, than we are. Whereas our Juries, for the most Part, only consider the Evidence of the Fact forbidden by Statute, and do thereupon find the Prisoner guilty, without considering any thing of the *Relevance*, or in what Degree the Act or Fact was in itself truly criminal, or naturally illative of any Punishment; or if it was innocent or indifferent in its own Nature.

Now this is equally a Misrepresentation; because there can be no Instance given of this Usage in any Nation, where the *Relevance* of a Fact supposed criminal, is considered otherwise than by the Law of that Nation: For to say that every Judge or Court of Justice found a Process not relevant, where the Fact

was criminal by Law, or that they absolved the Party, from any Consideration that the *Malum prohibitum* was not *Malum in se*, or that they could dispense with an Edict or Statute, from any Distinction between *real* and *constructive* Crimes, is so far from being true, that there is not any Nation in the World, except our own, where there is a Distinction between *Manfaying* and *Murder*; yet, in this Case, certainly our Juries consider in what Degree the Act or Fact is truly criminal, or illative of any Punishment; whereas, in all other Nations, there is no *Relevance* considered in the Inquisition for Blood, but the Stroke of Death is penal, without Distinction of Cases, and the Penalties of it cannot be mitigated by any judicial Consideration, nor by any Power but that which is supreme, legislative, and uncontrollable.

IN FRANCE the Edict against Duelling is, of all others, the most inexorable. I would ask this Author, If France be one of those Nations abroad, which is more cautious than we are of condemning Men on penal Laws, or for Crimes merely statutory? Is the Provocation, Compulsion, or Necessity of entering into such Combat at all considered in Opposition to the *Relevance*? And where the Accident is sudden, or where 'tis manifest that there was no *Malice prepense*; will this, in the View of their Judges, make the Act or Fact less illative of Punishment? And, not to quibble on Words, tho' it naturally ought, yet will it, in Judgment, be likely to have this Consideration?

THE FACT then is certain, that other Nations are not more, but less cautious than we are in condemning Men on Crimes merely statutory. That they do consider the *Relevance* of the Process is true; but if it be relevant from any known Edict, they must sustain it, whether the Fact be *really*, or only *statutably* criminal; and where Edicts interpose not, or the Statute Law be silent, if they are to judge by common Usage, and the Construction either of Laws *municipal* or *universal*; there, I take it, they can have no Advantage over us, since, by the Constitution of this Kingdom, that only is criminal, and punishable at Common Law, which is *Malum in se*.

THE Difference between the Laws of England and those of other Nations, will be found very great in our Favour, when it is considered, that tho' every Process is in the same manner sustained by positive Law; yet here the Acts of the People, and there the Edicts of the Prince, are the Statutes which declare the Crime, and specify the Punishment: So that, with us, the Law is a public Interest; but abroad it is merely a *personal* private Property. In Britain it preserves every Man. In almost all other Countries it destroys them. For here it is every one's Defence against sovereign Power; but there it is the Sword and Scourge of Power, which no Man can dispute with.

AGAIN, the Difference between our Laws and those of Nations abroad, is remarkably great, in regard that the Judges here are OFFICERS OF THE PEOPLE; and there the mere Instruments and Creatures of the Prince: That here the greatest Hazard and Peril which such Magistrates can fear, is the Odium and Vengeance of the People; whilst every-where else it is the Displeasure of the Prince which they dread, and which they dare not, in the least Degree, provoke: So that our Security would be greater than theirs, were the Law of this Kingdom altogether constructive; whereas it is our Happiness that capital Crimes amongst us are defined by positive Laws, and only Misdemeanours can be declared by Construction of Common Law.

It is true, indeed, that in some Cases, Juries do not consider whether an Act prohibited by Statute, was innocent or indifferent in its own Nature: And the Reason manifestly is, because Innocence or Indifference is never to be supposed after the Law hath prohibited the Fact which Men ought not to commit, because it is prohibited, and which when they commit, they ought to be punished for, because the Law must be obey'd. If the Nature of Things, and not the Statute, should be considered as necessary to the *Relevance* of any Criminal Process, then every Man's Affection or Disaffection to a Government, would be the only Rule in finding a Bill of Indictment for High Treason; since a disaffected Jury would scarcely think Rebellion naturally illative of any Punishment; but if they guide themselves according to their Oaths, by the Laws, then

they will not hesitate to agree, that Rebellion is illative of the highest Punishment.

IN the same Manner the Laws of a Kingdom must preclude all Enquiries into the Design of the Party, where the Fact is of such a Nature, that it could not be committed without an unjust and an unlawful Intention. As in Treason; the Fact of taking up Arms against the King, implies the Intention of deposing the King: As in Murder; the Fact of sleeping, after any Provocation given, or having had competent Time to cool the Passions before a Challenge to fight is sent, implies *Malice prepense*, and a premeditated Purpose to kill. So in DEFAMATION, and the lower Classes of Crimes, there are Intentions which must be supposed, against which Suppositions no Evidence or Arguments can be admitted: For, where private Persons or the Publick have been injured by false and scandalous Inventions, it is not to be suggested that the Party was mistaken in Fact, or meant fairly in imputing the Scandal, or brought Lies and Slander to help an honest Cause; but it is eternally to be admitted, that where he utter'd any thing false and scandalous in itself, he utter'd it from a false and scandalous Intention, and for a wicked End. And whilst Common Law is founded in Common Sense, it can have no other Consideration of the Design of such Acts.

THIS leads me to examine the dreadful Charge on English LAWS and JURIES, that the latter would correct, and the former condemn a Slander on a Peer, or even a Bishop, importing that he voted against a Bill for preventing Bribery, or against an Enquiry into Frauds. And questionless both Laws and Juries ought to punish every Slander of either Kind; for if this be meant, as the Writer expressly declares, to RESTRAIN that infinite Trust which we repose in the Wisdom, Lenity, and Sincerity of our Laws, by reflecting on the Honour of those who are trusted with the Legislation; I may be allowed to say, that no Slander can be more mischievous or malignant, than that which wounds the Character, strikes at the Liberty of every Member of the Legislature, debarring him from the free Use of his Judgment on the Merits of a Bill, which though utter'd in with a Preamble against Bribery, may be compounded of the most unreasonable Projects, introducing exorbitant Powers, and tending to the worst Purposes; so that every Man who abhors Bribery, may oppose such a Bill with greater Indignation, on account of so base an Artifice, as using popular Names to sanctify private, selfish and immoderate Views.

NEITHER is the Slander less infamous, or worthy of Punishment, when such a Person shall be charged as obstructing an Enquiry into Frauds, where he could not concur in every Measure carried on with such a Pretence, or prosecute the Matter in such a Manner, as to him seemed partial, violent, unjust. By this Method of stigmatizing Characters, any one of a Grand Jury who refuses to return an Indictment of High Treason, *Billa vera*, obstructs the Punishment of Rebellion and Treason, though he had no Evidence before him that could warrant his Concurrence in the Prosecution. I will not enter into any Disquisition of the Fact suggested by the Writer, though I could shew it in such an infinite Variety of Lights, as would leave no room to doubt, that if no Man, without being vilified, may vote against Proceedings or particular Steps in Proceedings, which those who promote them are pleased, for their Credit, to christen Enquiries into Frauds, there can be no Liberty remaining to the Members of a Legislative Power, since no Man can use his Judgment freely or impartially, without suffering the worst Defamation: And that therefore every thing tending to defame Members of Parliament, in such a Manner as tends to destroy the Liberties of Parliament, ought not to have Encouragement or Impunity by the Laws of the Kingdom.

WE may now attend to the Question, 'If Laws be consider'd as the spurious Offspring of Bribery and Corruption, who would trust his Life or Property in such a Nation?'

To which I answer, that there is vast Difference between considering or describing the Laws in this Manner, and really believing them to deserve it.

If, where the Laws be considered as this spurious Offspring of Bribery and Corruption, no Man would trust

7001



trust his Life or Property in a Nation. It follows very plainly;

1. *That the Writer before us, who trusts his Life amongst us, without any Apprehension that to defame the Laws can endanger even his Liberty, is himself an Evidence on the Side of those Laws, that they are not so spurious an Offspring; but deserve a better Commendation for Wisdom, Lenity and Sincerity, than he vouchsafes to give them.* And,

2. *That the Idol of his Faction, who with all his Animosity against those Laws which exclude him, hath been known to have placed under their Protection the last Stock of his imaginary Crown, and scruples not to draw Support from that Publick Credit which subsists by his Exclusion, is likewise an Evidence on the Side of the Laws, that Property may be trusted in a Nation, whose Funds are the Refuge of his own ruined Fortunes.*

But were I to consider the Charge as worthy of Credit in any Degree, and to answer the Question, *Who would trust his Life or Property in a Nation, where the Laws are the Offspring of Corruption?* I should truly say, that every Man who would not trust either his Life or his Property in a Country where the arbitrary Will of the Prince is the only Law of the Land, would trust both Life and Property, by an infinite Disparity of Preference, even in that Nation which might not be free from Corruption. And I might add, they would have less Reason to fear being bribed out of their Lives or Estates, than they must have to expect being devoured by the ravenous Claim of a Right from Heaven to enslave them.

[To be continued.]

Edinburgh, Nov. 6. The Rejoicings in the City, on account of his Majesty's safe Arrival to these his Dominions, were put off till Monday last, when the Mufick Bells play'd from 4 to 8. The Right Hon. the Lord Provost, Magistrates, and Council, with a great Number of Persons of Distinction, met in the Town-house, and drank his Majesty's, and many other loyal Healths, under several Discharges of a Detachment of the City Guard, and ended the Night with great Joy and Gaiety.

Yesterday being the Anniversary of the happy Deliverance of these Nations from the Gunpowder Plot, at 12 the great Guns from the Castle were fired, and in the Evening there were publick Rejoicings all over the City.

Last Week William Drummond of Hawthornden, Esq; sen. walking abroad after Dinner, tumbled over a Precipice, and died on the Spot.

Northampton, Nov. 10. Tuesday last the 4th Instant, being remarkable for the Birth and Marriage Day of King William III. our never-to-be-forgotten Deliverer from a Popish Monarchy and Slavery, the same was celebrated here in a very grand Manner. Many of our Country as well as Town Gentlemen met at the George Inn, amongst whom were Sir Thomas Samwell, Sir Arthur Heslridge, and Sir William Humble, Barts. William Wilmer, Esq; one of our worthy Representatives, Robert Andrews, Thomas Samwell, and Henry Laughton, Esqrs. the Hon. Colonel Bland, Colonel Geary, with several others, where a very sumptuous Ordinary was provided; and in the Evening the House was illuminated, and a large Bonfire was made before the Gates, where the three Troops of the Right Hon. the Earl of Pembroke's Regiment of Horse being drawn up, fired four several Times, when the following Healths were drank, viz. to the Glorious and Immortal Memory of King William, his present Majesty's, the Queen's, Prince of Wales's, and all the Royal Family's, to the King's true Friends, and Prosperity and Success to a good and lasting Trade of this Nation; and the Evening concluded with other loyal and honourable Healths.

The same Day appeared in their Formalities the worshipful John Fawcett, Esq; Mayor, the Depty Recorder, and Aldermen of this Town.

LONDON.

Yesterday a French Mail arrived with the *Paris Alman* dated Nov. 19. which says, that the Count de Montijo, the Spanish Ambassador, is expected there every Day, who, when he arrived in Holland from Hanover, met with an Express from his Court, which ordered him to repair forthwith to that of France. And that the King of Sardinia has issued a Proclamation in his Dominions, enjoining all his Subjects in foreign Parts, to return home within a certain Time, on the Penalty of 400 Livres, and 4 Years Imprisonment; and

that the Parents are to be responsible for their Children.

For want of other more material Advices, the Author concludes with an Account of the Death of the old Lady Maucoumbie, Widow of the Sieur Crete, who died on the 1st Instant, 111 Years old, at the Castle of Eponne belonging to M. Herau, Counsellor of State, and Lieutenant-General of the Police. He adds, that she has left a Brother 108 Years old, who is in good Health, and writes without Spectacles; and that, when but 16 Years of Age, he was one of those that guarded the Convoy which the Great Prince of Conde threw into Rocroy, just before that famous Battle in 1643, which was so fatal to the Spanish Monarchy.

By the last Flanders Mail there are Letters from Petersburg, that the Czarina having called in all the old Species, a new Coin is now current in her Dominions, with her Majesty's Name and Effigies; and that she has ordered the States of Courland to provide Quarters for some Regiments which she has thought fit to recal from Poland.

The Affair of Corsica continues to give the Republic of Genoa great Uneasiness, inasmuch that all the Nobles in the Country were summoned to a Council at Genoa, on the Penalty of 4 Gold Crowns; but when they met they did not agree, nor was any thing resolv'd on touching the Ratification of the Suspension of Arms; so that the Term limited for it is like to expire, without its being either approved or rejected. The Malecontents keep 1500 Genoese Soldiers shut up in three Villages, along with Pinelli's Son; so that it would be an easy Matter for them to finish the War at one Stroke, by taking them Prisoners at Discretion. The Malecontents had a general Meeting on the 20th of October; but what was therein resolv'd is a Secret. They offer indeed to submit, but 'tis on such Conditions, that 'tis evident they are for giving Law to the Genoese their Masters, who, in the mean time, blame Pinelli for preferring Severity to Clemency.

Her Grace the Dutchess of Buckingham is arrived at Calais on her Return home.

On Monday last Thomas Carpenter of Gatton in Surry, Esq; was married to Miss Elton, Daughter of George Elton, Esq; a Beautiful young Lady, with a Fortune of 8000 l.

On Tuesday last his Highness the Prince of Modena was introduced to their Majesties and the rest of the Royal Family at St. James's, and took his Leave, he intending to set out on Saturday Morning next for Dover, on his Return home.

Yesterday his Highness and several other Persons of Distinction, went to see the Royal Palace at Hampton Court, and her Majesty's House and Merlin's Cave at Richmond. And

To-morrow he goes to view Windsor Castle, where he will dine with his Grace the Duke of St. Albans in the Round Tower.

The Arguments brought by the Gentlemen on Mr. Locke's Side of the Question upon Innate Ideas, at the Disputation on Sunday Evening last, were very strong and ingenious; but a second Opponent being then demanded by Gentlemen present, when only one Opponent was expected, that Question is proposed to be more fully examin'd in the Disputation on Sunday Evening next, in order to advance to the Lectures and farther Disputes pursuant to that Principle. A Gentleman from Cambridge, of a considerable Estate, has written to Town, that he will shortly dispute with Mr. Henley.

Yesterday Bank Stock was 145 1-8th. India 161 1-half to 162. South Sea 89. Old Annuity 108 5 8ths. New ditto 109 1-half. Three per Cent. Annuity 97 1-4th. Emperor's Loan 105 1-4th. Royal Assurance 100 1-8th to 1-4th. London Assurance 12 3-4ths to 7-8ths. York Buildings 13 3-4ths. African 15 1-half. India Bonds 51. 7s. Prem. Three per Cent. ditto 31. 8s. Premium. S. Sea Bonds 31. 6s. Premium. New Bank Circulation 41. 10s. Premium. Salt Tallies 41. 2s. 6d. Premium. English Copper 21. 1s. Welsh ditto, Books shut. Three 1-half per Cent. Exchequer Orders 1 per Cent. Prem. Million Bank 108.

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Together with a very curious Collection of Natural History, Physick, and Surgery, being the Library of Tmo. HANCOCK, M. D. Which will be sold very Cheap (the lowest Price in each Book) on Tuesday Nov. 18, 1735, beginning at Nine in the Morning.

By FLETCHER GYLES, Bookseller over-against Gray's Inn, in Holborn.

CATALOGUES may be had of Mr. Strahan in Cornhill, Mess. Innys and Manby in St. Paul's Church-yard, Mr. Woodward in Fleetstreet, Mr. Lewis in Russell-street, Covent-Garden; Mr. Stagg in Westminster-Hall; Mr. Parker in Pall-Mall; Mr. Thurlbourne in Cambridge; Mrs. Fletcher in Oxford; Mr. Leake in Bath, Bookfellers, and at the Place of Sale.

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N. B. No Letters received except Post paid.